



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov>



**RECEIVED**

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**DIV. OF OIL, GAS & MINING**

IN REPLY REFER TO:

3809

(UT-923)

UTU-70593

Date: November 3, 2006

CERTIFIED MAIL--Return Receipt Requested

### STATE DIRECTOR DECISION

Operator:  
Star Stone Quarries, Inc.  
4040 south 300 West  
Salt Lake City, Utah 84107

: Notice: UTU-70593  
: Project Name: Torrey Quarry  
:  
:

### Preliminary Finding of Common Variety Upheld

In a letter dated July 19, 2004, you requested that I review and grant a stay of the decision of the Henry Mountain Field Station dated June 25, 2004 reiterating BLM's preliminary finding that the mineral deposit being mined at T. 29 S., R. 5 E., Section 8, NW¼ and SW¼SE¼ is a common variety. On August 13, 2004, I issued a letter accepting the request to review the Henry Mountain Field Station decision and informed you at that time that the stay you requested was denied because you did not provide justifiable cause for granting the stay.

In your letter dated July 19, 2004, you provided four reasons why you believe the material you are mining under Notice UTU-70593 is uncommon. In order to evaluate your assertion, a mineral examination report must be completed in accordance with 3809.101. The decision as to whether the material being mined is common or uncommon variety is strictly based on the outcome of a mineral examination report which must be performed by a certified mineral examiner. Until the mineral examination report is completed, the BLM cannot render a decision as to whether the deposit that you are mining is a common or uncommon variety.

A mineral examination report is an independent verification by the BLM of the mineral deposit in question meeting the McClarty guidelines, which are addressed at McClarty v. Secretary of the Interior, 408 F.2d. 907, 908 (9<sup>th</sup> Cir., 1969). The standards set forth to distinguish between common varieties and uncommon varieties of minerals are: (1) there must be a comparison of the mineral deposit in question with other deposits of such minerals generally; (2) the mineral deposit in question must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the



mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher piece which the material commands in the market place.

On November 7, 1997, you were notified by certified letter that Ron Teseneer was the certified mineral examiner assigned to this case. Mr. Teseneer has been unable to complete the mineral examination due to re-assignment to another office in the BLM. I am remanding the case to the Field Station to complete a mineral examination report. Michael Jackson, a certified mineral examiner, has been assigned to examine the subject mineral deposit and to a complete mineral examination report. A new notification letter for the start of the mineral examination will be mailed to you, when it is scheduled by the Richfield Field Office. As stated, based on that report, a determination will be made as to whether the subject deposit is a common or uncommon variety. If the deposit is determined to be a common variety, then a subsequent decision will be issued by the BLM.

In our review of this case, two issues surfaced that should be addressed. First is the Henry Mountain Field Stations determination that you had disturbed 7 acres as of March 17, 2003. This was a significant material change in your mining notice. A plan of operations was required and you submitted it on July 9, 2004. Notice UTU-70593 is being rolled into Plan of operation UTU- 80114. Notice UTU-70593 cannot be extended. The environmental assessment is in the process of being completed for the plan of operations and once completed the financial guarantee amount of \$35,000 filed with the State of Utah, Division of Oil, Gas and Mining will have to be verified as sufficient for the reclamation of the approved mining operation.

The second issue deals with the requirement to make payments prior to removing the material from the site. You were also required to submit a monthly report with the amount of material removed with weight tickets attached as supporting documentation by the 15<sup>th</sup> of the following month the material is removed. Please ensure you pay for the material prior to removing it and provide the field station with the required reports. These funds will remain in the escrow account until the issue of common/uncommon variety is resolved through the completion of the mineral examination report.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.809, you may appeal this decision to the Interior Board of Land Appeals (IBLA) Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time



the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

/s/ Gene R. Terland

ACTING

Gene Terland  
State Director

Attachment:

Form 1842-1

cc: Paul Baker, Oil Gas & Mining, 1594 West North Temple, Suite 1210, Salt Lake City, Utah 84114-5801

Star Stones SD Review ts-sa 11-03-06



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- |                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. NOTICE OF APPEAL.....</b>                                             | A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>2. WHERE TO FILE NOTICE OF APPEAL.....<br/>WITH COPY TO SOLICITOR...</b> | Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145-0151 or<br>Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101<br>and<br>Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>3. STATEMENT OF REASONS<br/><br/>WITH COPY TO SOLICITOR.....</b>         | Within 30 days after filing the Notice of Appeal, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary (43 CFR 4.412 and 4.413).<br><br>and<br>Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>4. ADVERSE PARTIES.....</b>                                              | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associated Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associated Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>5. PROOF OF SERVICE.....</b>                                             | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>6. REQUEST FOR STAY.....</b>                                             | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your notice of appeal (43 CFR 4.21 or 43 CFR 2804.1). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.<br><br>Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.